

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY A. KOLARS,

Defendant.

CASE NO. 8:04CR467

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report ("PSR") in this case. The parties have not objected to the PSR. See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Court has also considered the Defendant's motion for departure and deviation from the sentencing guidelines (Filing No. 29) and request for an evidentiary hearing. The request for an evidentiary hearing, as well as the motion for downward departure and deviation from the guidelines, are denied. The Court is aware that it has the authority to grant a downward departure and declines to exercise that authority.

IT IS ORDERED:

1. The parties are notified that my tentative findings are that the PSR is correct in all respects;
2. The Court's tentative finding is that the Defendant's motion for downward departure and deviation from the guidelines, including the request for an evidentiary hearing (Filing No. 29) is denied in its entirety;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 23rd day of February, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge